

## **REMARKS**

The Office Action dated May 26, 2010, has been received and carefully noted. The above amendments to the claims, and the following remarks, are submitted as a full and complete response thereto.

By this Response, claim 1 has been amended and claim 37 has been added to more particularly point out and distinctly claim the subject matter of the present invention. No new matter has been added. Support for the above amendments is provided in the specification, at least, on page 16, lines 13-19. Accordingly, claims 1, 5, 17, 19 and 37 are currently pending in the application, of which claim 1 is the only independent claim.

Applicant thanks the Examiner for the courtesies extended to Applicant's representative during the telephonic interview on May 17, 2010. Based on the Examiner's recommended amendments to claim 1, Applicant has amended claim 1 to more particularly point out and distinctly claim the tree retaining member of the tree stand. In view of the above amendments and the following remarks, Applicant respectfully requests reconsideration of claims 1, 5, 17, 19 and 37, and timely withdrawal of the pending claim rejections for the reasons discussed below.

The Office Action rejected claims 1, 5, 17 and 19 under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Specifically, the Office Action alleged that it is not clear if the term "projections" defined in claim 1, line 3, is the same as or different from the term "projections" defined in claim 1, line 8.

Applicant has removed the limitation “wherein the tree gripping means comprise projections” from line 3 of claim 1 to eliminate the redundant recitation of these features, rendering this rejection moot. Applicant respectfully requests withdrawal of this rejection and reconsideration of claims 1, 5, 17 and 19. Applicant respectfully submits that claims 1, 5, 17 and 19 are now in condition for allowance.

The Office Action rejected claims 1, 5 and 17 under 35 U.S.C. §102(b) as allegedly anticipated by U.S. Patent No. 6,568,127 of Kalman. Applicant respectfully submits that claims 1, 5 and 17 recite subject matter that is neither disclosed nor suggested in Kalman.

Claim 1, upon which claims 5, 17, 19 and 37 depend, recites a tree stand, which includes a fluid reservoir about a tree retaining member including tree gripping means. The fluid reservoir includes a cylindrical or frustoconical member being closed at one end thereof by a base. The tree retaining member is connected to the base and includes an aperture located on a side of the tree retaining member and a substantially cylindrical hollow member. The tree gripping means includes a plurality of projections arranged on the interior surface of the tree retaining member and extending in a radial fashion, inwardly from an interior surface of the tree retaining member. The projections run substantially axially with the tree retaining member and include a sharp or pointed portion arranged in use to at least partially penetrate the trunk of a tree inserted into the tree retaining member. The tree retaining member is configured to hold a tree inserted

therein without using any moveable mechanical means in the form of screws or bolts by resisting lifting of a tree inserted therein relative to the tree stand.

Applicant respectfully submits that Kalman fails to disclose or suggest every feature recited in claims 1, 5 and 17, and therefore fails to appreciate the features discussed above.

Kalman is directed to a tree stand with a liquid reservoir. The tree stand includes a base having a receptacle for receiving and supporting the trunk of a tree. A fluid reservoir that stores a fluid is detachably connected to the base. A series of valves are operable to control the flow of water from the fluid reservoir into the receptacle (Kalman, col. 1, lines 36-56).

Kalman fails to disclose or suggest every feature recited in claims 1, 5 and 17. In particular, Kalman fails to disclose or suggest, at least, “the tree retaining member comprises an aperture located on a side of the tree retaining member,” as recited in claims 1, 5 and 17 (emphasis added).

Kalman discloses a stand 12 that includes a base 16. The base 16 includes a receptacle 18 for receiving and supporting a trunk of a tree. Receptacle 18 holds a supply of water which is supplied to the trunk of the tree. Kalman further discloses a fluid reservoir 14 that is detachably mounted to the base 16 within a holder 24. The fluid reservoir 14 provides water on a continuous basis to the receptacle 18 of the stand 12 through a flexible tube 76 *into the bottom* of receptacle 18. Therefore, Kalman fails to disclose or suggest that the receptacle 18 includes “an aperture located on a side of the

tree retaining member,” as recited in claims 1, 5 and 17. Accordingly, Kalman fails to disclose or suggest every feature recited in these claims.

Applicant respectfully requests withdrawal of this rejection and reconsideration of these claims. Applicant respectfully submits that claims 1, 5 and 17 are now in condition for allowance.

The Office Action rejected claim 19 under 35 U.S.C. §103(a) as being allegedly unpatentable over Kalman. The Office Action acknowledged that Kalman fails to disclose or suggest every feature recited in this claim. The Office Action alleged, however, that it would have been obvious to modify the tree stand of Kalman, so that the fluid reservoir and tree retaining member are in fluid communication, because this modification would allow water to drain more efficiently. Applicants respectfully submit that claim 19 recites subject matter that is neither disclosed nor suggested in Kalman.

As previously discussed, Kalman fails to disclose or suggest every feature recited in claim 1, and therefore also fails to disclose or suggest every feature recited in claim 19. In particular, Kalman fails to disclose or suggest, at least, “an aperture located on a side of the tree retaining member,” as recited in claims 1 and 19 (emphasis added).

Furthermore, claim 19 depends from, and further limits, claim 1. Accordingly, claim 19 should be allowable for at least its dependency upon an allowable base claim. Applicant respectfully requests withdrawal of this rejection and reconsideration of claim 19. Applicant respectfully submits that claim 19 is in condition for allowance.

Applicant has added new claim 37. Claim 37 recites, in part, “an aperture located on a side of the tree retaining member ... wherein the aperture comprises a slot cut in a curved surface of the tree retaining member.” As discussed for claim 1, Kalman discloses that the opening for the flexible tube 76 is located *in the bottom* of the receptacle 18. Furthermore, this opening is cut *in a flat surface* of the receptacle 18, and therefore Kalman fails to disclose or suggest an aperture that includes “a slot cut in a curved surface” of the receptacle 18. Therefore, Kalman fails to disclose or suggest every feature recited in claim 37.

Furthermore, claim 37 depends from, and further limits, claim 1. Accordingly, claim 37 should be allowable for at least its dependency upon an allowable base claim. For these reasons, Applicant respectfully submits that claim 37 is in condition for allowance.

Applicant respectfully submits that claims 1, 5, 17, 19 and 37 recite subject matter that is neither disclosed nor suggested in Kalman. Applicant respectfully requests withdrawal of the pending claim rejections and reconsideration of these claims. Applicant respectfully submits that claims 1, 5, 17, 19 and 37 are now in condition for allowance.

If for any reason the Examiner determines that the application is not now in condition for allowance, it is respectfully requested that the Examiner contact, by telephone, Applicant’s undersigned representative at the indicated telephone number to arrange for an interview to expedite the disposition of this application.

In the event this paper is not being timely filed, Applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension together with any additional fees may be charged to Counsel's Deposit Account 50-2222.

Respectfully submitted,

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